IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11420 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAVINDRA @ OMDAN CHENDAN @ CHELDAN CHARAN (GADHVI)

Versus

DISTRICT MAGISTRATE KUTCH

Appearance:

1. Special Civil Application No. 11420 of 2004

MR NK MAJMUDAR for Petitioner No. 1

MS PUNANI Ld. AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 08/12/2004

ORAL JUDGEMENT

1. Heard Mr. Suthar ld. advocate for Mr. NK Majmudar ld. advocate for the petitioner and Ms. Punani

ld. AGP for the respondents-State.

2. The present petition is under Article 226 r/w. Articles 21 and 22(5) of the Constitution of India. The petitioner has challenged legality and validity of order of detention dated 2.6.2004, passed by the District Magistrate, Kutchh-Bhuj, under purported exercise of powers vested with the Detaining Authority under Sec. 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act').

3. The petitioner is detained for his alleged bootlegging activity considered by the detaining authority. The detaining authority has mainly considered the fact of registration of five different prohibition offences punishable under sec. 66(1)(B), 65(A)(E) and 116B of the Bombay Prohibition Act. In two of the offences, he was also found responsible for the offence punishable under sec. 81 of the said Act.

4. The grounds for detention conveyed to the petitioner when the order under challenge came to be executed reveals that out of 5 offences, last offence is registered by Anjar Prohibition Police Station on 19.3.2004. The first offence was also registered by Anjar Prohibition Police Station on 14.8.2002. It is submitted by Mr. Suthar that this court has consistently considered the date of registration of last offence and undue delay caused in passing the preventive detention has been pressed into service for getting the order set aside. It is true that in present case, the detaining authority has considered three different statements of witnesses who have claimed privilege of secrecy, along with the registration of these 5 offences. I have considered the statement and the contest thereof, these statements were recorded by the sponsoring authority on 20.3.2004. So, on the day next on which, he was arrested for the last offence mentioned in the grounds of detention. Ms. Punani ld. AGP has submitted that considering the date of recording of the statement, it should be held that the authority has applied the mind before passing the order of detention and subjective satisfaction is recorded in satisfactorily manner. These witnesses have been taken before the DY.S.P. of Anjar Sub Division on 22.3.2004 and all the three witnesses have confirmed contents of the statement given by them. Having considered the statements, it is clear that the substantive part of the statements are of vague nature and the same could not have been made base for recording of subjective satisfaction to the effect that the activity of the present petitioner is a serious threat to

the maintenance of public order or the public health. It is rightly argued that the delay caused in passing the order of detention, therefore, should be held to be fatal to the validity of the order. The order of detention is passed after approximately 2 and 1/2 months and no reasonable explanation is comingforth for the delay caused in passing the detention order. Normally, the detention order is passed with utmost care and after application of mind and in expeditious way. Promptness with all care and diligence is one of the basic requirements for passing preventive detention order and, therefore, only the courts have quashed the order where even representations have not been considered expeditiously. Each delay may not prove fatal but unexplained delay of even couple of days may affect adversely to the validity of the order and the detention.

5. In the present case, the verification recorded by the District Magistrate and the detaining authority is also not found satisfactorily. The verification is recorded in a slip-short manner and it is mentioned that the witnesses have claimed that they are afraid of the activity of present petitioner and they have stated voluntarily the facts to Police Inspector Mr. HG Vasavada of Gandhidham Police Station and, therefore, their names and other personal details i.e. details as to age, address and business should be kept secret. Request of the witnesses have been recorded and the confirmation of the fact that P.I. Vasavada has recorded statements on 30.3.2004. Considering the ratio of the decision in the case of Bai Amina v. State of Gujarat & Ors., reported in 1981 GLR p. 1186, the court is of the view that in the present case the privilege claimed by the detaining authority has not been appropriately or legally exercised. The finding recorded by this court in the cited decision in para-15,16 and 17, it is not necessary to quote three paras. However, it would be beneficial to reproduce the observation of this court in the case of Moh. Sharif @ Kaliyo Nurmohammadsarnibapu, reported in 1997(1) GLH p. 1017, wherein this Court (Coram; M.R. Calla, J.) has said that:

> "The question which requires consideration in the facts of the present case is as to whether the Detaining Authority had applied its mind to the statements of these witnesses with regard to these incidents while forming an opinion so as to warrant the detention"..... "Except the contents of these statements, there is no other contemporaneous evidence on the basis of which

the detaining authority could form the opinion with reference to any contemporaneous evidence relating to the date of the respective incidents so as to form the opinion that the petitioner detenu was a dangerous person and that he would be subjected to the detention under the provisions of the Gujarat Prevention of Anti-Social Activities Act. When the verified statements are placed for consideration before the detaining authority, the detaining authority has to apply its mind and such application of mind must be made manifest in the body of the order itself and in any case, when it is alleged that the order had been passed without application of mind, it must be shown before the Court by way of filing the affidavit or otherwise on the basis of some contemporaneous evidence and the reasons which can be said to be germane so as to warrant the detention."

6. The finding recorded by this court in the case of Kishor N. Parmar vs. State, reported in 2000(4) GLR p. 3236, this Court (Coram: A.L. Dave, J.) said that;

"In this view of the matter, the order of the detaining authority and the grounds of detention do not indicate the basis of arriving at the subjective satisfaction. A mere statement about having verified the veracity, genuineness and correctness of the fear expressed by the witnesses, under such circumstances, can be of no virtue, in absence of contemporaneous material. The detention therefore stands vitiated for want of proper exercise of powers under Sec.9(2) of the P.A.S.A. Act and resultant infringement of a constitutional right of the detenu of making an effective representation due to non-disclosure of names of the witnesses. The order of detention, therefore, deserves to be quashed and set aside by allowing this petition."

7. The submission of Mr. Suthar on the point of placing the papers for verification before the detaining authority at a belated stage also needs consideration. Though the witnesses have taken before the Dy.S.P., Anjar on 22.3.2004, they were not taken for verification till 20.5.2004 before the District Magistrate. The delay

caused by the sponsoring authority of practically one month from the date of recording the statement by P.I. Gandhidham has remained unexplained. This also vitiates the validity of the prevention detention. This petition, therefore, shall have to be allowed.

8. This petition is allowed. Impugned order of detention dated 2.6.2004 passed by the District Magistrate, Kutchh-Bhuj, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute. DS permitted.

(C.K. BUCH, J.)
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